

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PRESIDO GROUP LLC, et. al.,

Plaintiffs,

v.

MARINO WHITE O'FARRELL &
GONZALEZ, et. al.,

Defendants.

CASE NO. C10-5196BHS

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT
AND PROVIDING
PLAINTIFFS WITH OTHER
NOTICE

This matter comes before the Court on Plaintiffs' motion for summary judgment (Dkt. 42). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. DISCUSSION

A. Plaintiffs' Motion for Summary Judgment

On November 11, 2010, Plaintiffs moved the Court for summary judgment. Dkt. 42. On November 30, 2010, Plaintiffs notified the Court that no Defendant had opposed their motion for summary judgment. Although the Court might ordinarily consider finding such an unopposed motion meritorious under Local Rule 7(b)(2) (failure to file opposition pleadings), this is not an ordinary case.

1 Currently no remaining named Defendant has appeared or is participating in this
2 case. In fact, when a Defendant has appeared in this case, Plaintiffs have promptly and
3 voluntarily dismissed their claims against such Defendant. *See, e.g.*, Dkts. 15, 40, 41, 60.
4 Additionally, the Court has not yet set a case schedule that would supply the timing for
5 dispositive motions such as summary judgment.

6 The Court sets such a case schedule when the parties submit a **joint** status report in
7 accord with the Court's rules. While Plaintiffs have submitted a "status report," no **joint**
8 status report has ever been filed, which would be followed by the Court entering a case
9 schedule in this matter.

10 Based on the foregoing, Plaintiffs' summary judgment motion is premature. The
11 proper vehicle for obtaining judgment when parties do not appear to defend in a suit is a
12 motion for default, which Plaintiffs have not filed.

13 **B. Putting this Case On Track**

14 The Court finds this case to have gotten off track. This is primarily due to the
15 failure of Plaintiffs' counsel to follow the orderly progression of a case. The orderly
16 progression of a case begins with a simple and plain statement of the harm caused and the
17 relief sought, a complaint. *See* Fed. R. Civ. P. 8. Here, Plaintiffs' counsel filed a 386-page
18 amended complaint. Dkt. 38. This is neither short nor plain and is patently unacceptable.
19 *See* Dkt. 38 (nine pages are dedicated to the caption).

20 The 386-page amended complaint leaves the Court with little ability to even begin
21 to ascertain what claims are being made and on what facts those claims might be
22 supported. Further, with Plaintiffs voluntarily dismissing every Defendant who makes an
23 appearance in this matter, the Court must understand which Defendants remain and which
24 claims attach to those Defendants. Plaintiff shall, therefore, file a second amended
25 complaint ("SAC") no later than January 21, 2011. This SAC shall be both simple and
26 plain in accord with the rules and shall not exceed twenty (20) pages.
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1 The joint status report deadline in this case is hereby extended to February 25,
2 2011. Failure to file a **joint** status report can result in the dismissal of Plaintiffs' case.
3 Should the remaining Defendants fail to appear in this case after the SAC is filed and
4 served upon them, Plaintiffs may then move for default in accord with the rules.

5 **C. Notice**

6 Additionally, Plaintiffs' counsel is directed to use the caption as provided in this
7 order in all pleadings going forward. Plaintiffs' counsel is not to put more than a simple
8 title for the type of motion he brings before the Court. Plaintiffs' counsel is also directed
9 to comply with all of the Civil Rules and the Local Rules. Additionally Plaintiffs' counsel
10 is directed to make his CMECF filings in an appropriate manner and with short and plain
11 titles to alert the Court as to the nature of the pleading or document filed. Plaintiffs'
12 counsel's current method of identifying filings on the CMECF is unacceptable. If and
13 when Plaintiffs' counsel elects to file additional motions, those motions will be supported
14 by the proper documentation (supporting documents should be filed on CMECF as
15 attachments to an affidavit or declaration).
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17 Plaintiffs' counsel is hereby put on notice that failure to comply with these
18 directives could result in sanctions as deemed appropriate by the Court.

19 **II. ORDER**

20 Therefore, it is hereby **ORDERED** that

21 (1) Plaintiffs' motion for summary judgment (Dkt. 42) is **DENIED without**
22 **prejudice.**

23 (2) Plaintiffs shall **FILE** a SAC as discussed above, on or before January 21,
24 2011, which is not to exceed **twenty (20)** pages; and
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1 (3) Plaintiffs' counsel is directed to **TAKE NOTICE OF AND COMPLY**
2 with the directives herein.

3 DATED this 7th day of January, 2011.

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6 BENJAMIN H. SETTLE
United States District Judge
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